

## SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

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|                           |   |                    |
|---------------------------|---|--------------------|
| Hattie R. Hart            | ) |                    |
| Appellant                 | ) |                    |
|                           | ) | DECISION AND ORDER |
| -V-                       | ) |                    |
|                           | ) | 17-APP-00001       |
| Saint Regis Mohawk Tribe, | ) |                    |
| Chief Ronald Lafrance,    | ) |                    |
| Chief Eric Thompson,      | ) |                    |
| Chief Beverly Cook        | ) |                    |
| Appellees                 | ) |                    |

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### Jurisdiction

The case comes before the Court of Appeals on appeal from a decision issued by the Tribal Court, signed by Hon. Barbara Potter on December 26, 2016. The Court of Appeals possesses “jurisdiction to hear all appeals from the Tribal Court.”

### Procedural History

The procedural history up to the December 26, 2016 order issued by Judge Potter is set forth in the Order issued by the Saint Regis Mohawk Tribal Court.

Appellant Hart filed her Notice of Appeal with the SRMT Court of Appeals on January 27, 2017. The Notice was filed timely, pursuant to SRMT Rules of Civil Appellate Procedure, (hereinafter SRMT Rules Civ.App.Proc.), Section IX, Rule 7(A). The filing fee was paid in a timely manner. SRMT Rules Civ.App.Proc., Section VIII, Rule 6(B). No request for a transcript has been made, nor has any exception to the requirement been offered by Appellant as permitted by SRMT Rules Civ.App.Proc., Section X, Rule 8(B)(2), (C), (D).

### Analysis

#### Appellant Failed to Order a Transcript of Proceedings; Failed to Cause Timely Transmission of the Record

The SRMT Rules of Civil Appellate Procedure state, in Section X, Rule 8(B)(1) that:

“No later than ten (10) days after filing the Notice of Appeal, the appellant shall order from the court reporter or transcriber an original and one copy of a transcript, of such parts of the proceedings necessary for inclusion in the record. If the Appellant intends to argue on appeal that a finding or conclusion is un-supported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.”

Exceptions to the ten day time limit are identified under SRMT Rules Civ. App. Proc. 8(B)2), 8(C) and 8(D). No exception permitted under SRMT Rules Civ. App. Proc. 8(B)(2) or 8(C) or 8(D) has been requested by Appellant.

The SRMT Rules of Appellate Procedure address “Docketing the Appeal”; “Filing of the Record” and “Dismissal for Failure to Cause Timely Transmission [of the record] or To Docket Appeal” in Section XI, Rule 9 (A), (B) and (C). Section (C) requires that the Appellate Court dismiss an appeal on its own motion in the event that appellant fails to timely transmit the record on appeal.

Appellant filed her Notice of Appeal on January 27, 2017. Pursuant to the SRMT Rules of Civil Appellate Procedure noted above, she was required, in addition to serving the Notice of Appeal on the opposing party and providing the Court proof of service, to order a transcript of the proceedings within ten (10) days after filing the Notice of Appeal. To date, no transcript has been ordered, or filed with the Court Clerk. The Appellant has neither requested an extension of time, nor exercised the alternatives to the filing of a transcript allowed under the SRMT Rules of Civil Appellate Procedure. Therefore the Court of Appeals must dismiss this Appeal because it has not been perfected in a timely manner, as required by law

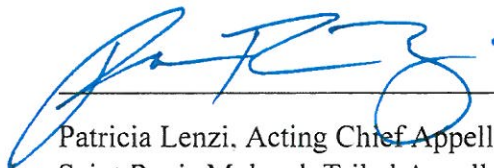
In accordance with this Court’s determination that the action must be dismissed because Appellant failed to perfect her Appeal, this Court emphasizes that it reaches no conclusion regarding the issues raised by the Appeal. Those issues raised in the Tribal Court action, include:

- Whether the respondent (“SRMT”) has waived its sovereign immunity in this case;
- Whether the SRMT’s individual Chiefs and Sub-Chiefs are cloaked with the Tribe’s sovereign immunity in this case;
- Whether the Tewa’tthaho’n:ni Corporation (hereinafter “TWTH”) is an alter ego of the Tribe;
- Whether transfer of the funds alleged to have been transferred from the SRMT to TWTH was an expenditure;
- Whether the SRMT’s decision to transfer funds requires a referendum vote of the Tribal membership;
- Whether the Election Board can properly find the above question ripe for the Election Board’s review under the Election and Referendum Ordinance, as currently written;
- What remedy properly lies, if any, when a SRMT decision was not properly put to a referendum vote;
- Whether this Court, and therefore the trial court, have personal and/or subject matter jurisdiction over the dispute, as alleged in the Complaint;
- Whether this Court has subject matter jurisdiction to hear a case where a possible conflict of law between various SRMT Ordinances lies, specifically between SRMT Election and Referendum Ordinance Section XIV(A)(4) and Tribal Court and Judiciary Code Sections V(2) and (4), and VI(1);
- Whether the SRMT waived its right to reply, or waived issues on appeal, under the Judiciary Code Section XIII, Rule 11(A).

## ORDER

It is hereby ORDERED that, for the reasons stated herein, this appeal is DISMISSED without prejudice. The Tribal Court Order signed December 26, 2016, remains in full force and effect.

Signed by my hand this 20<sup>th</sup> day of September 2017.



Patricia Lenzi, Acting Chief Appellate Judge  
Saint Regis Mohawk Tribal Appellate Court



Karla General, Associate Appellate Judge  
Saint Regis Mohawk Tribal Appellate Court



Lisa Garabedian, Associate Appellate Judge  
Saint Regis Mohawk Tribal Appellate Court

